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Committee on Indian Affairs. Report

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IN SENATE OF THE UNITED STATES,

FEBRUARY 22, 1830.

Read, and ordered to be printed.

Mr. WHITE made the following

REPORT:

The Committee on Indian Affairs, to whom was referred that part of the President's Message, dated the eighth day of December last, which relates to Indian Affairs, have had the same under consideration, and ask leave to submit the following report:

Every thing which relates to those Indian tribes or nations with which we have political relations, *created or regulated* by treaties, is becoming, every year, more and more interesting; especially those relating to such as reside within any of the States of the Union, or of the Territories belonging to it. The matters communicated by the President, in his Message, relative to the Cherokees, are of the most delicate and interesting character, whether considered in relation to the United States, to the States of Georgia and Alabama, or to the Cherokee Nation. The committee have employed themselves assiduously in their investigation, with an anxious wish to avail themselves of all the information within their reach, and desirous to recommend something to the Senate, which, if productive of no positive good, will at least have the merit of not farther embarrassing questions, already sufficiently complicated.

With this nation, the United States have formed a number of treaties, commencing as early as the year 1785, and ending in the year 1819. At the formation of the first, the Indians occupied portions of territory within the chartered limits of the States of North Carolina, South Carolina, and of Georgia. Since that period, North Carolina ceded a part of her territory, on which a portion of these Indians resided, to the United States; and that territory, *according to the terms of the deed of cession*, has been since formed into the State of Tennessee. South Carolina and Georgia amicably settled the boundary between them; and by an agreement between the United States and Georgia, dated in the year 1802, the United States acquired the title to a portion of territory, out of which the State of Alabama, and the greater part of the State of Mississippi, have been since formed. And now, it so happens, that a part of the Cherokees still reside within the States of North Carolina and Georgia, according to their *present* boundaries, as well as within the limits of Tennessee and of Alabama. Latterly, Georgia, in the exercise, as she supposes, of her sovereign powers, has extended her laws over the

whole of the State, and subjected the Indians to her jurisdiction. Meantime, the Cherokees have formed a civil government of their own, entirely independent of any State, claiming to have a right to do so in virtue of their original title to the lands on which they reside, and relying, likewise, upon the guarantee of their country, in several of their treaties formed with the United States. They have called upon the Executive to make good this guarantee, by preventing the operation of the laws of either Georgia or Alabama, within those limits secured to them by the said treaties. To this application the President has replied, that he has no power to check the operation of the laws of those States, within their respective limits; that the Constitution of the United States forbids the formation of any new State within the limits of an old one, without its consent; therefore, the Cherokees cannot be recognized as a separate State, within those limits where they now reside; and that, if they choose to remain *there*, they shall be protected in doing so, but that they must submit to the laws of the respective States, at the same time they are protected by them, and earnestly recommends to them to consent to exchange the country where they now reside, for one West of the Mississippi, owned by the United States, and not yet included within the bounds of any State or Territory, where they can be again united with that portion of their nation which has already emigrated, and where the United States can, and will, make them for ever secure from any interruption from the whites, or from any other nation or people whatever.

To this proposition the Indians have given an absolute refusal, still insisting on a fulfilment of their treaty stipulations.

The laws of Georgia will commence their operation in the month of June next. It is easy to foresee the painful consequences which will probably follow, from laws operating over the same territory, at one and the same time, and flowing from jurisdictions or sovereigns, *independent* of each other.

The evil will not stop here; already we are advised Mississippi has passed a law, incorporating her Indian population with her citizens; that Alabama has extended her laws over the Creek Indians within her limits; and, before long, we may anticipate that the like policy will be pursued by several other States.

From the information before the committee, no hope need be entertained that either of those States will change their policy, and repeal those laws; a period has arrived, when the United States have a duty to perform, which must be discharged, in *good faith*, to the States concerned, to the Indians, and with a *sacred regard* to their own high character.

In the view which the committee have of this subject, they believe it would be unnecessary, if not improper, for them to offer any opinion upon the points in dispute between the contending parties, because there can be no reason to suppose any additional enactments by Congress are necessary to put it in the power of the Executive to make good the *guaranties* contained in the treaties, if, in his judgment, they ought to have the construction for which the Cherokees insist, and his duty, according to the constitution, would authorize him to oppose the operation of the State laws.

In 1802, Congress passed an act to regulate trade and intercourse with the Indians, the provisions of which, connected with the treaties, are sufficiently broad to authorize the Executive to give effect to every stipulation, which it is the duty of the United States to perform.

The failure to comply with the wishes of the Cherokees, as it appears to the Committee, proceeded not ~~from~~ a defect in the law, but because, in the

opinion of the Executive, *constitutional* objections exist, which it is not in the power of Congress to remove, by any law which they could enact.

The difficulties which have actually occurred, were foreseen some years since, and successive Administrations seem to have been anxiously endeavoring to avoid them; and the only remedy suggested by any, appears to have been, to provide a country West of the Mississippi, beyond the limits of any State or organized Territory; to have it laid off and divided into as many districts as would accommodate *all the Indians* residing within any of the States or Territories; to have those districts so described, by natural or artificial marks, that each could be known from every other; and then, by fair and peaceable means, to induce the Indians to exchange the lands *where they live*, for some of those thus described, and to emigrate. Suitable country, as is believed, has been procured, but, owing to some cause or other, the districts have not, as yet, been laid off, and properly described. Exchanges, however, to a considerable extent, have been made, and consequent emigrations from various tribes have taken place. A portion of the Cherokees, equal, as is believed, to from one third to one half of the whole, has actually removed to, and settled in, a country well suited to their wants and wishes, West of the Mississippi. There is good reason to believe many more would have removed before this time, except for various causes, which, as yet, the United States have not been able to overcome. The principal one is, the idea of a separate and independent State of their own, where they now live. This is the work, principally, of comparatively a few, who are either white men connected with the nations by marriage, or of those of mixed blood, born in the nation, who are well educated and intelligent, who have acquired considerable property, and, thro' the annuities paid by the United States, and by other means, are yearly adding to it. This class of people, it is believed, do not altogether equal one hundred in number. A very small portion of full blooded Indians can be named, who are in the like circumstances, or who have much agency in their public affairs.

Those who are in public employ have an influence almost unbounded over the nation. They fill all the offices created by their laws, and have the entire management of the funds derived from every source. The rest of the nation may be divided into two classes. The one owning some small property, and having settlements of their own, upon which they make a sufficiency to support themselves and their families, and but little surplus. Those of the other, comprehending, as is believed, the mass of the population, are as poor and degraded as can well be imagined. They may be said to live without hope of better circumstances; they have almost no property, and seem destitute of the means or prospect of acquiring any. There is very little game in their country. They are without industry, without information, unlettered, and subsisting chiefly upon what they can beg, and upon the birds and fish they can procure. A stranger who travels along a leading road through the nation, or makes but a short stay in it, will form a very erroneous opinion of the true condition of the great mass of the population. He has intercourse only with those of the first or second class before mentioned, and forms his opinions of all, from the condition of those with whom he associates. It may then be asked, why do these people refuse to emigrate? The answer is, those who have influence over them use every means in their power to prevent them. They misrepresent the country offered, west of the Mississippi. They use persuasion, while it answers the purpose, and threats, when persuasion is likely to fail. The committee are

well satisfied, that every humane and benevolent individual, who is anxious for the welfare of the great body of the Cherokees, *and is correctly informed of their true condition*, must feel desirous for their removal, provided it can be effected with their *consent*.

Other strong inducements for this desire, must be found in the condition to which they are now brought, by the collision between them and the laws of the States in which they reside.

Although the committee, for the reasons before given, consider it unnecessary, if not improper, in them, to offer any opinion upon the validity of the conflicting claims of the parties; yet, it may not be without its use to call the attention of the Senate to some of the leading facts, and main points, upon which the controversy has depended, and must hereafter depend.

The title of the Cherokees must rest upon their original right of occupancy, and upon the treaties formed with the United States.

As to the first, "their title by occupancy," the answer would be, when the country was discovered, they were savages; and that this discovery, of itself, gave a right to form settlements, and to exclude all other civilized nations. That it conferred upon the nation of the discoverer and settler, the right to acquire the usufructuary interest which the natives had. It would be added, that, at a very early period, the Cherokees formed a treaty with Great Britain, by which they gave up their independence, and put themselves under the protection of his Britannic Majesty. That they took a part with the British Crown in the war of the Revolution. That the American arms were employed against them, and they conquered, when Independence was acknowledged, and the treaty of peace made with Great Britain. That this conquest conferred upon the respective *States*, within whose limits they were, all the rights, and gave them all the powers which the Crown had, *prior* to the Revolution. That this right still continued in the States, and never was yielded to the United States. That, in securing these rights, they severally exercised these powers, from the year 1776 up to the year 1785, in such manner, as, in their sovereign will, they believed to be wise and just, without any control from the United States.

That, although, in the Articles of Confederation, there is a power given to the United States to make treaties with Indians residing *out* of their limits, yet there is, in the ninth article, an express saving to *each State*, of all its legislative rights, *within its chartered limits*.

As to the second point, the political condition of the Indians, as established by treaties between them and the United States. The first and only treaty with the Cherokees, during the Articles of Confederation, was concluded in November, 1785.

By that treaty, a boundary is established, which allots to the Indians a great extent of country, within the acknowledged limits of both North Carolina and Georgia, and over which those States had actually legislated; had previously authorized by law the sales of land therein; a considerable quantity had in fact been sold to individuals, and the consideration money paid to the State.

Against this treaty both Georgia and North Carolina entered their *solemn protests*, it being, as they alleged, in violation of their *legislative rights*.

Not very long after this treaty, the Cherokees waged a war against the citizens of those States, which continued until some short time prior to the treaty of Holston, concluded in the year 1791.

This was the first treaty made with those Indians under the authority of

the present Constitution of the United States, and by it a new boundary is agreed upon, by which the limits before allotted to the Indians are reduced to a smaller compass.

By the seventh article, "*the United States solemnly guaranty to the Cherokee nation, all their lands not hereby ceded.*"

On the seventh day of February, 1792, an additional article to this last mentioned treaty, is agreed upon, by which an addition of five hundred dollars is made to the annuity stipulated in the former treaty.

In June, 1794, another treaty is made between the parties, by which the provisions of the treaty of 1791, are revived, an addition made to their annuity, and provision for running and marking the boundary line.

In October, 1798, an additional treaty is concluded, by which *former treaties are revived*, the boundary of Indian lands curtailed by another cession to the United States, for an additional compensation.

In October, 1804, another treaty is concluded, by which more land is ceded by the Indians, for a consideration agreed upon and specified in the treaty.

In October, 1805, two treaties are made, by which the Indians cede an additional quantity of land.

On the seventh day of January, 1806, another treaty is concluded, in which more land is ceded to the United States; and in September, 1807, an explanation is agreed upon of the boundary line intended in the treaty last mentioned.

On the 22d day of March, 1816, another treaty is concluded, by which the Indians relinquish their title to lands in South Carolina, for which the United States engage South Carolina will make payment; and on the same day, another treaty is made, in which the Indians relinquish to the United States their claim to more lands, and agree to allow the use of the water courses in their remaining country, and also to permit roads to be made through the same.

On the 14th of September, 1816, another treaty is made, by which an additional quantity of lands is ceded to the United States.

On the 8th day of July, 1817, another treaty is concluded, by which an exchange of lands is agreed on, and a plan for dividing the Cherokees settled, One part to remain East of the Mississippi; another to emigrate West of the Mississippi, to a country designated in the treaty; and those who might happen to fall within the territory ceded, to have *an election to become citizens of the United States*, and each head of an Indian family to have a reservation of six hundred and forty acres of land, to include his improvements.

And on the 27th February, 1819, another treaty is concluded, intended to be in execution of the stipulations contained in that of 1817, in several particulars, and in which an additional tract of country is ceded to the United States.

These, as the committee believe, are all the treaties between the United States and the Cherokee nation on the *East side* of the Mississippi, and within the limits of any of the United States.

In several of them there are stipulations for *roads*, the *navigation of rivers*, and the *establishment of ferries*, within the bounds reserved by the *Cherokees to themselves*, and guarantied to them by the United States.

In virtue of these treaties, the Cherokees contend they have a valid and complete title to the lands of which they are in possession; and that they

have a right to establish such government, as, in their own opinion, is best suited to their condition; and that such government is *independent* of any of the States within the limits of which any portions of their territory may happen to be; and that the United States stand *solemnly pledged* to protect them in the *peaceable enjoyment* of it, against all the world.

On the other side, the States may admit, that, if the *political condition* of the Cherokees was to be considered, as it related to the *rights* and *powers* of the *United States, only*, then it is true, they are, and ought to be, a community *sovereign*, in all respects, those only excepted in which they had by the treaties expressly *surrendered* their independence; and still contend that Georgia was a sovereign and independent State, from the 4th day of July, 1776, a period *anterior* to the Union of the States, under either the Articles of Confederation, or of the present Constitution. That, as a sovereign State, she had a right to govern every human being within her limits, according to her own will, and to dispose of all the vacant lands, when, to whom, and for what consideration, she pleased. That she is still in the possession of all those rights and powers, excepting only such as she has expressly surrendered. That she never has surrendered to the United States, either by a treaty, or by any other means, the power to dispose of her vacant territory, or to authorize the establishment of a Government within her limits, without her consent. So far from it, that the 9th article of the Confederation forbids any violation of her legislative rights, and expressly provides that no State shall be deprived of territory for the benefit of the United States; and that the 3d section of the 4th article of the Constitution expressly says: *No new State* shall be formed within the limits of one or more of the *old*, without their consent. And the 10th amendment of the Constitution declares, that even "private property shall not be taken for public use, without making just compensation." That, if private property cannot be taken *without compensation*, the conclusion is very strong, that it was not intended to give a power to take the property which belonged to a *sovereign State*, under any circumstances whatever. That she never did give her consent to this disposition of either her jurisdiction or of her territory; so far from it, she entered her *solemn protest* against the *first treaty* formed in the year 1785, as violative of her rights, and that no inference can be drawn to her disadvantage, from her silence, or from any thing she may have said in relation to any subsequent treaty; because, in each of them, a change was made, by which a portion of her territory and jurisdiction was restored to her, and thus her condition rendered better than it was under the treaty of 1785, against which she had protested.

She may further insist, that the second section of the second article of the Constitution, which gives to the President, with the advice and consent of two-thirds of the Senate, power to make treaties, has no application to Indians within the chartered limits of any of the States; nor the eighth section of the first article, which gives Congress power to regulate commerce with the Indian tribes. That if Indians can be treated with, it must be those only who reside *out of the limits* of the States, and those with whom commerce may be regulated must be similarly situated; otherwise, that part of the second section of the first article, which forbids the enumeration of Indians residing within the States, and "not taxed," will be without any appropriate meaning. That although the United States may have contracted *obligations* with the Cherokee nation, yet they had *previously* contracted those equally as *solemn* with *each of the States*. That in the 4th section of

the 4th article of the Constitution, the following pledge is given: "The United States shall *solemnly guaranty to every State in this Union* a republican form of Government, and shall protect each of them against invasion, and, on application of the Legislature, or of the Executive, (when the Legislature cannot be convened) against *domestic violence*."

She may ask, how can Georgia have a "republican form of government," co-extensive with her limits, unless a majority of her citizens are permitted to prescribe rules, to which *all must conform*? How will the United States have made good the "*guarantee against domestic violence*," if they permit a portion of the population *within her limits* to establish a Government, contrary to her will, with authority to prescribe rules inconsistent with those prescribed by herself? She may add, that it was in the confidence that this "*solemn guarantee*" would be sacredly kept, that she consented to *give up* any portion of her sovereignty, and become a member of the Union.

In addition, she may urge, that, in 1802, upwards of twenty-seven years ago, she made a contract with the United States, by which they became bound to purchase any claim which the Cherokee nation, or any other, might set up to lands within her limits, as soon as such purchase could be made upon reasonable terms. That, for this stipulation, she paid, at the time, a valuable consideration, in lands which she conveyed. That, after waiting thus long, and seeing for several years past, the prospect of a compliance on the part of the United States decreasing, she had determined to exert her own sovereign powers, over her *whole* territory, in such manner as she believes will be *just* to her whole population. That the object of this agreement was to obtain a benefit for herself, within her reserved limits, and that, if she should fail to receive the benefit she expected, she will take care not to suffer her condition to be made worse.

That she is yet sovereign, within her own limits, to every extent she was when she became a member of the Union, except so far as she expressly surrendered her sovereignty by the *terms* of the Constitution. That, although she is determined to use her power within her limits, yet she owes it to her own character so to exert it as most to promote the happiness of every rational being who may remain subject to her control, no matter what may be his color, or in what language he may make known his wants.

Alabama and Mississippi may say they were a part of the State of Georgia, up to the time of the compact and cession, in 1802, and that they have been erected upon parts of the territory then ceded to the United States; and that, with the exception of the difference, produced by not owning the soil within their limits, they are entitled to the benefit of every argument which Georgia could urge in this controversy.

Should these arguments, or any others, in favor of the States, have the effect of proving that the United States have not the *power* to comply with the stipulations contained in their treaties with the Cherokees, on account of *prior* and *superior* obligations which they had contracted, it could not, in the opinion of the Committee, take any thing from that character for integrity and good faith to which they are so justly entitled. None could suspect that the obligation was contracted with a design to mislead or to deceive; and while the United States are both able and willing to make a full and adequate compensation for all that may be lost for want of a *specific performance* of their agreement, their faith is preserved as inviolate as it would be if *all their stipulations were specifically complied with*. Should the Indians continue determined to reside where they now are, and become subject to

the laws of the respective States in which they reside, no difficulty can occur, as your Committee see no reason to apprehend that either of the States have it in contemplation to force them to abandon the country in which they dwell; but, if they determine to remain, and continue to insist on a separate and independent government, and refuse obedience to the laws of the States, the consequences which must inevitably ensue, are such as the humane and benevolent cannot reflect upon without feelings of the deepest sorrow and distress.

If, on the contrary, they should consent to exchange their present places of residence for a country West of the Mississippi, it is in the power of the United States to furnish one, suited, as the Committee believe, to their wants and condition; where they can be secured against the intrusion of any other people; where, under the protection of the United-States, and with their *aid*, they can pursue their plan of civilization, and, ere long, be in the peaceable enjoyment of a civil government of their own choice, and where Christian and philanthropist can have ample scope for their labors of love and benevolence.

Your Committee are of opinion, that ample means should be placed, by Congress, in the power of the President of the United States, to authorize and enable him to have the country West of the Mississippi, out of the limits of all the States, laid off into as many districts as may be deemed necessary for the residence of the Indians, now within the respective States, with which the United States have treaties; to have those districts accurately described; and, also, to make exchanges and purchases with such tribes, or parts of them, as may choose to remove; to give aid in the removal, and to contribute, for a season, to their support, at their new places of residence. For which purposes the committee ask leave to report a bill.

A BILL

To provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal West of the river Mississippi.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall and may be lawful for the President of the United States, to cause so much of any territory, belonging to the United States, West of the river Mississippi, not included in any State, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there, and to cause each of said districts to be so described by natural or artificial marks, as to be easily distinguished from every other.

SEC. 2. *And be it further enacted,* That it shall and may be lawful for the President to exchange any or all of such districts, so to be laid off and described, with any tribe or nation of Indians now residing within the limits of any of the States or Territories, and with which the United States have existing treaties, for the whole, or any part or portion of the territory claimed and occupied by such tribe or nation, within the bounds of any one, or more, of the States or Territories.

SEC. 3. *And be it further enacted,* That, in the making of any such exchange, or exchanges, it shall and may be lawful for the President solemn-

ly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guaranty to them, and their heirs or successors, the country so exchanged with them, and that, if they prefer it, the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States, if the Indians become extinct, or abandon the same.

SEC. 4. *And be it further enacted*, That if, upon any of the lands now occupied by the Indians, and to be exchanged for, there should be such improvements as add value to the land claimed by any individual or individuals of such tribes or nations, it shall and may be lawful for the President to cause such value to be ascertained, by appraisement or otherwise, and to cause such ascertained value to be paid to the person or persons claiming such improvements.

SEC. 5. *And be it further enacted*, That, upon the making of any such exchange as is contemplated by this act, it shall and may be lawful for the President to cause such aid and assistance to be furnished to the emigrants, as may be necessary and proper to enable them to remove to, and settle in, the country for which they may have exchanged; and also, to give them such aid and assistance as may be necessary for their support and subsistence for the first year after their removal.

SEC. 6. *And be it further enacted*, That it shall and may be lawful for the President to cause such tribe or nation to be protected, at their new residence, against all interruption or disturbance from any other tribe or nation of Indians, or from any other person or persons whatever.

SEC. 7. *And be it further enacted*, That it shall and may be lawful for the President to have the same superintendence and care over any tribe or nation in the country to which they may remove, as contemplated by this act, that he is now authorized to have over them at their present places of residence.

SEC. 8. *And be it further enacted*, That, for the purpose of giving effect to the provisions of this act, the sum of _____ dollars is hereby appropriated, to be paid out of any money in the Treasury, not otherwise appropriated.



